# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 343.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

*vs.*

MARY QUINLAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 8, 1898.

(16,928.)

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# (16.928.)

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INDEX.



DD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 9, 1898.

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

THE CITY OF NEW ORLEANS, Plaintiff in Error,
*versus*
MARY QUINLAN, Defendant in Error. } No. 12501.

Samuel L. Gilmore, Esquire, city attorney, and W. B. Sommerville, Esquire, assistant city attorney, for The City of New Orleans, plaintiff in error.

Charles Louque, Esquire, for Mary Quinlan, defendant in error.

Writ of error to the circuit court of the United States for the eastern district of Louisiana (New Orleans division) from the Supreme Court of the United States, returnable at the city of Washington, D. C., within thirty (30) days from the fifteenth (15th) day of June, A. D. 1898.

*Transcript of Record.*

1 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Petition. Filed March 23rd, 1896.*

To the hon. the circuit court of the United States for the eastern district of La.:

The petition of Mary Quinlan, a *femme sole*, a citizen of the State of New York, respectfully represents:

That your petitioner is the owner of a number of certificates made by the city of New Orleans, a corporation duly created under the laws of Louisiana, and payable to bearer, amounting to the sum of two thousand five hundred & sixteen $\frac{70}{100}$ dollars, as more fully appears by the list hereto annexed and made part hereof.

That the said city has lately passed ordinance 11962, C. S., whereby all the surplus funds of the year 1895 and previous years are set apart to pay the claims existing for back years.

That your petitioner accepts the terms of the ordinance and waives any other mode of payment except as may be hereinafter provided by law, as more fully appears by said ordinance, hereto annexed and made part hereof.

Wherefore petitioner prays that the City of New Orleans be cited hereto and, after due proceedings, that judgment be rendered herein for the sum of two thousand five hundred & sixteen $\frac{70}{100}$ dollars and interest, payable according to the terms of ordinance 11962, C. S.; and petitioner prays for general relief, etc.

(Signed) LOUQUE & POMES, *Att'ys*

2 Filed Dec. 19th, 1896.

No. 12430. 58%. $15.08.

*Certificate of Ownership of Appropriation.*

Approved June 26th, 1883; issued under ordinance No. 347, C. S.

NEW ORLEANS, *Oct.* 14, 1885.

This is to certify that under ordinance 8099, adopted Oct. 24th, 1882, the sum of fifteen $\frac{8}{100}$ dollars has been appropriated to Jno. Killilea A. Jardet, transf-ee, for and on account of street wages, Aug., 1882, and the said named or the bearer hereof shall, upon the surrender of this certificate (and not otherwise), be entitled to receive, in the order of the promulgation of said ordinance, a cash warrant on the treasurer on any funds in the treasury to the credit of the appropriate funds and not otherwise appropriated.

It is herein specially agreed to by the holder of this certificate that it bears no interest and shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which this certificate applies, is paid or cancelled by being tendered and received in payment of taxes, when authorized by law, then this certificate shall be surrendered to the office of the comptroller.

(Signed) J. V. GUILLOTTE, *Mayor.*

(Signed) BENJ. H. WATKINS, *Comptroller.*

(On reverse side:)

MORALITY OF NEW ORLEANS, CITY HALL, *June 26th*, 1883.

*No.* 347, *Council Series.*

An ordinance to reduce to order and simplify the recording and management of unpaid accounts against the city for the years 1879, 1880, 1881, and 1882 by issuing for such as are ordinanced certificates of ownership of appropriation on the terms and conditions provided for in this ordinance.

3 SECTION 1. Be it ordained by the mayor and council of the city of New Orleans, That any creditor of the city to whom an appropriation has been made, but in whose favor the comptroller cannot draw a warrant until there is money in the treasury to the credit of the appropriate account, not otherwise appropriated, shall be authorized upon demand to receive a transferable certificate of ownership of appropriation, entitling said creditor or bearer to receive a cash warrant for the amount due in the order of the promulgation of the ordinance authorizing the same.

SECTION 2. Be it further ordained, That the said creditor shall sign a receipt thereof, stipulating that the cash warrant shall be claimed only on the surrender of this certificate, and the acceptance

of said cash warrant shall be held and considered as an acceptance and consent to the provisions and conditions of this ordinance.

SECTION 3. Be it further ordained, That said cash warrant shall be issued strictly in the order of the promulgation of the ordinance making the appropriation.

SECTION 4. Be it further ordained, That the certificates issued under this ordinance shall not novate or in any manner affect the nature of the claim against the city under this ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which said certificate applies or refers, is paid or cancelled by being tendered and received in payment of taxes, that is the city's portion for the respective years for which said certificate has been issued when authorized by law, then said certificate shall be surrendered to the office of the comptroller.

SECTION 5. Be it further ordained, That the certificate created by this ordinance shall state upon its face the nature and object of its issue, with numbers, dates and names suitable to each, and upon its reverse this ordinance in full shall be printed, the whole in words and figures, as follows, with the blanks appropriately filled in when issued from the office of the comptroller.

4 Adopted by the council of the city of New Orleans June 21st, 1883.

W. H. MICHEL,
*Assistant Clerk of Council.*

Approved June 26th, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
*Secretary to the Mayor.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Agreement as to Certificates Sued upon and Offered in Evidence. Filed June 24th, 1898.*

It is hereby agreed by the undersigned counsel, representing plaintiff and defendant, that the record for the Supreme Court of the United States herein shall not contain any of the evidence offered on the trial of this case, with the exception of a copy of one of the certificates sued upon, as all of the certificates offered in evidence were on printed blanks, varying from one another only in the names of payees, the amounts to be paid, and the dates of said certificates, and the clerk of the court is dispensed from copying any

evidence in the transcript of appeal for the Supreme Court of the United States excepting the one copy of certificate above referred to.

(Signed) CHARLES LOUQUE,
*Att'y for Plaintiff.*

(Signed) W. B. SOMMERVILLE,
*Att'y for Defendant.*

5 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Answer. Filed April 10th,* 1896.

And now into this honorable court comes the defendant, The City of New Orleans, who, for answer to the petition herein filed, denies each and every allegation therein contained, save and except what may be hereinafter specially admitted.

Defendant admits the passage of ordinance No. 11962, C. S., but denies that the plaintiff is entitled thereunder to the relief prayed for herein, and avers that by act No. 20 of 1882 and legislation amendatory of said act all surplus was specially dedicated to purposes of public permanent improvement.

(Signed) E. A. O'SULLIVAN,
*City Attorney.*

6 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Supplemental Petition. Filed Dec. 15th,* 1896.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The supplemental petition of Mary Quinlan, a citizen of the State of New York, respectfully represents:

That your petitioner is the owner of a number of the certificates, payable to bearer, drawn by the city of New Orleans, through its proper officers, as per list annexed hereto, amounting to the sum of six hundred and nineteen $\frac{4}{100}$ dollars.

That the city of New Orleans is a corporation duly created by law and a citizen of the State of Louisiana.

That under the terms of the original petition herein filed your petitioner, being in good faith and believing that the city of New Orleans did intend to carry out in similar good faith the terms of ordinance No. 11962, C. S., accepted the conditions thereof and was proceeding to carry *his* part thereof under these proceedings.

Your petitioner further represents:

That in utter disregard of the obligations under which the said city of New Orleans was to carry out the same, she has employed the money collected for said fund and has tacitly repealed the said ordinance 11962 by passing other ordinances contrary thereto and appropriating the said funds.

Your petitioner avers that -he is entitled to an unlimited judgment against the city of New Orleans, with interest from the date of the certificates, for the following reasons:

7 That the city of New Orleans has from January 1st, 1888, to Jan'y 1st, 1896, remitted the sum of thirty-two thousand and one hundred and sixty-five dollars of interest due on the taxes of 1882, out of which petitioner's claim *were* payable, and contrary to the law.

Your petitioner further avers that from the taxes of 1882 the sum of three thousand nine hundred and forty-seven $\frac{48}{100}$ dollars has been diverted to the payment of the running expenses of the government.

That if said above sum had been properly accounted for and administered your petitioner would have been paid long since.

Wherefore petitioner prays that this supplemental petition be filed; that the city of New Orleans be cited hereto, and, after due proceedings, that judgment be rendered herein in favor of your petitioner and against said city of New Orleans in the full sum of three thousand one hundred and thirty-five $\frac{74}{100}$ dollars, with legal interest from Jan'y 1st, 1883, and all costs of suit, and for general relief, etc.

(Signed) LOUQUE & POMES, *Att'ys.*

*Order.*

Let the foregoing supplemental petition be filed.

(Signed) CHARLES PARLANGE, *Judge.*

New Orleans, Dec. 15, '96.

8 *List of Scrip under Ord. —, A. S.*

| No. of certificates. | |
|---|---|
| 12419 | 18.85 |
| 12418 | 9.42 |
| 12417 | 19.57 |
| 12416 | 19.57 |
| 12415 | 31.32 |
| 11155 | 21. |
| 11153 | 6.82 |
| 52 | 10.92 |
| 51 | 10.92 |
| 50 | 24.36 |
| 49 | 21. |
| 48 | 6.82 |
| 47 | 13.91 |
| 46 | 14.17 |

| | | |
|---|---|---|
| | 45 | 14.17 |
| | 44 | 14.17 |
| | 43 | 25.20 |
| | 42 | 6.03 |
| | 41 | 13.65 |
| | 40 | 14.17 |
| | 39 | 14.17 |
| | 38 | 22.68 |
| | 37 | 29. |
| | 12432 | 15. |
| | 12430 | .... |
| | 12429 | 15.08 |
| | 28 | 33.64 |
| | 27 | 29.00 |
| | 26 | 9.42 |
| | 25 | 33.64 |
| 9 | 24 | 19.20 |
| | 23 | 19.57 |
| | 22 | 19.57 |
| | 21 | 34.80 |
| | 20 | 8.33 |
| | | 619.04 |

| | | |
|---|---|---|
| Interest remitted for the year 1882 from Jan'y to June, 1888. | | 235 |
| | July to Dec., 1888 | 1147 |
| Jan'y to June, 1889 | | 4873 |
| | " " 1889 | 4104 |
| " " 1890 | | 5700 |
| | " " 1890 | 2052 |
| " " 1891 | | 811 |
| | " " 1891 | 2975 |
| " " 1892 | | 2132 |
| | " " 1892 | 1714 |
| " " 1893 | | 1903 |
| | " " 1893 | 806 |
| " " 1894 | | 699 |
| | " " 1894 | 1119 |
| " " 1895 | | 855 |
| | " " 1895 | 1040 |
| | | $32165 |

10 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Exception. Filed Dec. 26th,* 1896.

Now into court comes the City of New Orleans and excepts to the jurisdiction of this court *ratione persona.*

That plaintiff's petition contains no averment that this suit could have been maintained by the assignors of the claim or certificates sued upon by Mary Quinlan and which form the basis of this action.

The City of New Orleans prays for oyer of the certificates sued upon in the petition and supplemental petition herein.

Wherefore defendant prays that the petition and supplemental petition filed herein be dismissed at plaintiff's costs.

(Signed) W. B. SOMMERVILLE,
*Assistant City Attorney.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Hearing and Submission of Exceptions.*

Extract from the minutes, November term, 1896.

NEW ORLEANS, MONDAY, *February 8th,* 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.
" J. Ward Gurley. U. S. attorney.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

11 This cause came on to be heard upon the exceptions of the defendant—W. B. Sommerville, assistant city attorney, appearing for exceptor; Chas. Louque, for the plaintiff—and was argued by counsel and submitted, when the court took time to consider.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Overruling Exceptions.*

Extract from the minutes, November term, 1896.

NEW ORLEANS, WEDNESDAY, *Feb'y 10th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.
" J. Ward Gurley, U. S. attorney.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard at a former day upon the exceptions filed by the defendant herein, and was argued by counsel and submitted.

On consideration whereof, it is ordered that the said exception to the jurisdiction of the court be overruled; it is further ordered that the prayer of the City, defendant, for oyer of the documents sued on be granted.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Answer. Filed Feb'y 11th*, 1897.

12 Now into this honorable court come- The City of New Orleans, defendant herein, and without waiving the exception hereinbefore filed but at all times insisting upon the same and excepting to the jurisdiction of the court *ratione personæ et materiæ*, denies all and singular the allegations contained in plaintiff's amended and supplemental petition filed herein.

Further answering, defendant says that ordinance #11962, council series, pleaded by plaintiff, is *ultra vires*, illegal, null, and void; that under and by terms of the charter of the city of New Orleans, act #20 of 1882, and the subsequent charter of said city, #45 of 1896, together with the legislation amending the prior charter, the surplus and interest collected by the city of New Orleans for each year is specially dedicated to works of permanent public improvement, and that the same cannot be diverted to the payment of plaintiff's claims, or for any other purpose than for public improvements.

Wherefore defendant prays that this suit be dismissed at plaintiff's cost.

(Signed) W. B. SOMMERVILLE,
*Assistant City Attorney.*

*Supplemental Petition. Filed April 8th, 1897.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

To the hon. the circuit court of the U. S. for the east. dist. of La.:

The supplemental petition of Mary Quinlan, a citizen of New York, respectfully represents:

13 That the following amounts have been paid by the city of New Orleans out of the funds of 1882, although the budget appropriations had been exhausted, and without warrant of law:

| | |
|---|---|
| Street wages | 52,999.82 |
| Bridges and crossings | 3,788.12 |
| Repairs | 13,074.93 |
| Markets | 994.38 |
| Salaries, water works & pub. bldgs | 146.67 |
| Court-house salaries | 878.22 |
| Aged and indigents | 999.60 |
| Insane | 2,612.27 |
| Engine-houses | 379.24 |
| Pounds | 971.38 |
| Public squares | 822.16 |
| Cemeteries | 216.25 |
| Police jail | 1,954.35 |
| Maintaining prisoners | 338.40 |
| Public printing | 1,332.42 |
| Law charges | 2,631.31 |
| Contingent | 12,193.10 |
| | $96,332.62 |

That the funds of 1882 have thus been *dilapidated* and wasted to the extent of ninety-six thousand three hundred and thirty-two $\frac{62}{100}$ dollars, and it would be inequitable to restrict your petitioner's claim to the revenues of the year when the same have been thus illegally dissipated.

Wherefore petitioner prays that this supplemental petition be filed, and that judgment be rendered as prayed for in the original and supplemental petitions herein filed, and for general relief, &c.

(Signed) LOUQUE & POMES, *Att'ys.*

Service accepted.

W. B. SOMMERVILLE,
*Ass't City Att'y.*

N. O., April 7, '97.
2—343

14 *Order.*

Let this supplemental petition be filed.
(Signed) CHARLES PARLANGE, *Judge.*

N. O., April 8th, 1897.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Answer and Exceptions. Filed April 15th,* 1897.

Now into this honorable court comes The City of New Orleans defendant herein, and without waiving the exception hereinbefore filed, but at all times insisting upon the same, and excepting to the jurisdiction of the court *ratione personæ et materiæ*, and upon further excepting to the amended and supplemental petition herein filed, on the ground that they alter the substance of plaintiff's demand by making it different from the one originally brought, and that a court of law is not competent to pass upon the matters contained in said supplemental petitions, and in the event that said exception be overruled, answering, denies all the allegations contained in plaintiff's petition filed herein.

Further answering, defendant says that the ordinance # 11962, C. S., pleaded by plaintiff is *ultra vires*, illegal, null, and void.

That under and by the terms of the charter of the city of New Orleans, act # 20 of 1882, and the subsequent charter of said city, act # 45 of 1896, together with the legislation amending the prior charter, the surplus and interest collected by the city of New Orleans for each year is specially dedicated to work of permanent public improvement, and that the same cannot be diverted to plaintiff's claim or for any other purpose than for public improvement.

15 Further answering, defendants show that judgment cannot be rendered on the certificates or warrants sued upon by plaintiff herein because issued by an officer of the municipal corporation of New Orleans when there was no money in the treasury of the city against which said evidences of indebtedness were drawn, which was in violation of a prohibitory law contained in section 5, act # 30 of the General Assembly of the State of Louisiana for the year 1877.

Further answering, defendant shows that the ordinance- Nos. 8004, 8005, 8096, 8097, A. S., amending the budgets of revenues and expenditures for the year 1882, under which plaintiff claims, are *ultra vires*, null, and void, for this, to wit:

1st. That ordinances 8004 and 8096, amending the budget of revenues, provides that item No. 13, "miscellaneous," be increased by $86,000, so as to read $171,000, and by $50,000, so as to make it

$221,000 instead of $85,000, as it originally reads in the original budget, ordinance #7535, A. S., as in violation of a prohibitory statute forbidding the counsel to consider and adopt as a revenue miscellaneous or contingent resources, as contained in section 65, act 20, 1882.

2nd. That said ordinances, together with ordinances #8005 and 8097, amending the budget of expenditures, violates a prohibitory law, which forbids the appropriating of more than 75 per cent. of revenues for the ordinary expenses of the government, as contained in section 66, act 20, 1882, and section 1, act 38, 1897.

3rd. That said ordinances violate another prohibitory statute, which reserves for public works and improvements all revenues derived from uncertain or indefinite sources, causes, or circumstances, contained in section 65, act 20, 1882.

Further answering, defendant shows that the constitution, art. 45, forbids municipal authorities to pay, or authorize the payment, of any claims against them under any agreement or contract made without express authority of law, declaring all such unauthorized agreement or contracts to be null and void; and defendant shows that plaintiff's claims fall under said constitutional objections.

16 Further answering, defendant shows that in no event were plaintiff's claims to be paid out of the interest fund of 1882, as said fund was no part of the budgeted revenues of said year, and that plaintiff has therefore no interest in the same or — to question the city's action in reference thereto.

Therefore defendant prays that the exceptions herein filed be maintained, or, in the event of their being overruled, that plaintiff's suit be dismissed at her cost.

(Signed) W. B. SOMMERVILLE,
*Ass't City Att'y.*

N. O., April 15, '97.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Motion to Fix Exception. Filed April 21st, 1897.*

On motion of W. B. Sommerville, assistant city attorney, it is ordered that the exceptions filed herein by defendant be set down for trial on the 24th day of April, 1897, at 11 a. m., & that plaintiff be notified thereof.

Service accepted.
(Signed) CHARLES LOUQUE, *Att'y.*

17 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Motion to Dismiss Supplemental Petition. Filed April 21st, 1897.*

On motion of W. B. Sommerville, assistant city attorney, and upon suggesting to the court that the amended and supplemental petitions herein filed alter and vary the demand contained in the original petition, and that they are contrary thereto and destructive thereof, it is ordered that plaintiff show cause on the 24th day of April, 1897, at 11 a. m., why said supplemental and amended petition should not be dismissed, or show cause why she should not elect upon which petition she stands.

Service accepted.
(Signed) CHARLES LOUQUE, *Att'y.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Submission.*

Extract from the minutes, November term, 1896.

NEW ORLEANS, SATURDAY, *April 24th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.
" J. Ward Gurley, U. S. attorney.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard upon the exceptions of defendant to the supplemental petition of plaintiff and on the rule to dismiss or compel plaintiff to elect—W. B. Sommerville, assistant
18 city attorney, appearing for exceptor and mover; C. Louque, for plaintiff in suit—and was argued and submitted, when the court took time to consider.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Overruling Exceptions.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, MONDAY, *Feb'y 21st*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard at a former day upon the rule filed by the defendant on April 21st, 1897, to require the plaintiff to elect as to which of the supplemental petitions she intended to stand on, and also upon the exception filed by said defendant on April 15th, 1897, as to the inconsistency of the supplemental petitions with the original petitions, and after argument of counsel was submitted.

Whereupon and upon consideration thereof it is ordered that the rule to dismiss or elect be denied and the exceptions be overruled, but plaintiff is required to make her pleadings more specific, and especially to set forth the exact nature of her certificates and their aggregate sum, and the special fund or funds out of which she contends that said certificates were entitled in law to be paid, and also to set forth fully and distinctly the manner in which said funds are claimed to have been delapidated or impaired.

19 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Allowing Defendant Time to Answer.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, TUESDAY, *Feb'y 22nd*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

Order.

In this cause The City of New Orleans, defendant, is not required to file any further pleadings herein until ten days after the plaintiff shall have complied with the order of the court of Feb'y 21st, 1898, requiring her to amend her pleadings.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Amended Petition. Filed Feb'y 28th*, 1898.

To the hon. the circuit court of the U. S. for the eastern dist. of Louisiana:

The amended petition of Mary Quinlan, a citizen of the State of New York, respectfully represents:

That your petitioner now annexes a list of the city time certificates and the certificates themselves issued and due by the city of New Orleans, a corporation duly created by the laws of Louisiana and a citizen thereof, said certificates amounting to the sum of thirty-one hundred & thirty-five $\frac{74}{100}$ dollars.

That said certificates were issued for the year 1882, and were made payable out of revenues of said year, but the city of New Orleans, in violation of the rights of your petitioner, misappropriated the funds which were set apart and destroyed the restriction heretofore existing.

Your petitioner mentions as some of the illegal diversions that said ordinances were not paid in their numerical order; that the city council disregarded the one-twelfth rule directed by statute; that the city paid amounts for which no appropriation were made in the budget; that said city paid $20\frac{0}{100}$ to a city employee for collection of said taxes, which was an illegal act; that said city paid to the back-tax bureau and other parties the expenses for 1888 to 1892 to the amount of 3,947.48 dollars; that said city remitted a large amount of interest, contrary to law and the constitution.

That if the said funds had been properly administered and the revenues honestly paid to the creditors your petitioner would have been paid since 1883.

Wherefore petitioner prays that this amended petition be filed, and that the City of New Orleans be cited hereto, and, after due proceedings, that judgment be rendered in favor of your petitioner and against the City of New Orleans for the sum of thirty-one hundred and thirty-five $\frac{74}{100}$ dollars, with 5 % interest per annum from Jan'y 1st, 1883, and all costs of court; and petitioner prays for general relief, &c.

(Signed) CHARLES LOUQUE, *Attorney.*

21 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Exceptions. Filed March 7th*, 1898.

Now into court comes The City of New Orleans, defendant herein, and for exception to the third amended petition of plaintiff filed herein shows that the same is too vague, general, and indefinite for respondent to attempt to answer thereto.

That said amended petition does not conform to the order issued herein by this court, requiring plaintiff to make her pleadings more specific and to especially set forth the exact nature of her certificates.

That plaintiff does not say whether she abandons the demand made by her in the original petition filed herein by her, asking for the enforcement of ordinance # 11962, council series, or not.

That plaintiff does not allege what kind of certificates she sues upon, nor the fund or funds out of which she contends that said certificates are entitled to be paid.

That plaintiff in said petition does not allege what appropriations were made by the city council for her benefit, nor what amounts were paid by the city without appropriations being made therefor in the budget, nor what amount or amounts were paid to city employés for collecting city taxes of 1882; nor to whom said amounts were paid, nor when any amounts were paid to said employés.

The plaintiff in her said amended petition does not state what amount of interest on taxes was remitted by the city, nor when it was remitted.

That defendant is entitled to know, and the court should be informed, when the amounts claimed by plaintiff came into the city treasury, how they were diverted, to whom paid, at what
22 time paid, and for what purpose.

Wherefore defendant prays that plaintiff be ordered to further amend her pleadings in this cause, in conformity with the order of the court hereinbefore made and in accordance with the objections made in this exception, within a time to be fixed by this court; otherwise that this suit be dismissed at plaintiff's cost.

(Signed) W. B. SOMMERVILLE,
*Assistant City Attorney.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Overruling Exceptions.*

Extract from the minutes, November Term, 1897.

NEW ORLEANS, SATURDAY, *March 19th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard upon the exception filed by the defendant to the amended petition filed—present, W. B. Sommerville, assistant city attorney, for exceptor; Charles Louque, for plaintiff—and was argued.

Whereupon and on consideration thereof it is ordered that said exception be overruled and defendant file its answer in 5 days.

23 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Exception of Prescription. Filed March 21st*, 1898.

Now into court comes the City of New Orleans and pleads in bar to plaintiff's claim the prescription of one, three, five, and ten years, as provided in the laws of the State of Louisiana, and defendant pleads said laws, particularly articles # 3534, # 3538, as amended by act # 78 of the General Assembly of the State of Louisiana, # 3540 and # 3544 of the Civil Code of Louisiana; and defendant asks that this suit *is* dismissed at plaintiff's cost.

(Signed) W. B. SOMMERVILLE,
*Ass't City Att'y, of Counsel for Defendant.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Answer. Filed March 22nd*, 1898.

Now into court comes the City of New Orleans, and, without waiving, but at all times insisting upon, the exceptions and pleadings heretofore filed—and specially the plea to the jurisdiction of

this court *ratione personæ et materiæ*, and the exception of prescription, all of which are now pleaded anew, as set forth in the pleas heretofore filed herein, and at all times invoking the benefit of said pleas—answers, denying all and singular each and all the
24 allegations in plaintiff's petition and amended petitions herein filed, and asks that this suit be dismissed at plaintiff's cost.

(Signed) W. B. SOMMERVILLE,
*Ass't City Attorney.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Case Called, Jury Empanneled, Hearing, and Continuance.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, MONDAY, *April 11th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause was called for trial.

Present: Charles Louque, attorney for plaintiff; W. B. Sommerville, ass't city att'y, for defendant.

Whereupon, before the jury was empanneled, counsel for the defendant, City of New Orleans, moved that the court hear the plea of prescription filed by said defendant before the jury is empanneled and decide said plea; which motion was refused by the court, and counsel for defendant reserved a bill of exception.

And thereupon the following-named jurors were sworn and empanneled to well and truly try the issue joined herein, to wit:

1. Jno. C. Baker.
2. Chas. Masicot.
3. Henry Ehrensing.
4. L. Macready.
5. Jno. D. Kelly.
6. P. A. Labarthe.
7. Amedee C. Jaume.
8. John Hogan.
9. W. H. Krone.
10. J. Walker Goodrich.
11. Christian Dreyer.
12. Jno. B. Chisolm.

When the court appointed J. C. Baker foreman of the jury
25 and the trial was proceeded with.

After hearing the pleadings, evidence, and testimony in part, it was ordered that the cause be continued until tomorrow at 11 a. m.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Hearing and Continuance.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, TUESDAY, *April 12th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause, as continued from yesterday, was this day resumed, and the counsel for the respective parties, as well as the jurors empanneled in the cause, being all present, the trial was proceeded with.

After hearing further evidence and testimony and arguments from the counsel for the respective parties, it was ordered that the cause be continued until tomorrow at 11 a. m.

26 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Overruling Plea of Prescription.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, WEDNESDAY, *April 13th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

In this cause, the court having duly considered the plea of prescription filed by the defendant, it is ordered that the said plea of prescription be, and the same is hereby, overruled, the counsel for said defendant reserving a bill of exception.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Verdict.*

Extract from the minutes, November term, 1897.

NEW ORLEANS, WEDNESDAY, *April 13th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

27 This cause, as continued from yesterday, was this day resumed, and the counsel for the respective parties, as well as the jurors empanneled in the cause, being all present, the trial was proceeded with.

After hearing the charge of the court, the said jury did then and there in open court, through their foreman, render and deliver the following verdict under the instructions of the court, to wit:

We, the jury, find a verdict for the plaintiff against the defendant, The City of New Orleans, for the sum of twenty-six hundred and thirty-five dollars and seventy-four cents ($2,635.74), payable out of the city's revenues for the year 1882, and out of any surplus of the revenues of any subsequent years which the city council may appropriate to that purpose.

JNO. C. BAKER, *Foreman.*

April 13th, 1898.

Whereupon it is ordered that the said verdict be recorded, and it is done accordingly.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Rule for New Trial. Filed April 16th*, 1898.

On motion of Charles Louque, attorney for plaintiff, and on suggesting to the court that the verdict of the jury and judgment herein rendered are contrary to law and the evidence on the following grounds:

1°. That the court erred in its refusal to charge the jury that the monthly *pro rata* was binding on the city of N. O. under the
28 provisions of act 68 of 1877.

2°. That the court erred in its refusal to charge that the diversion of funds of 1882 to pay the running expenses of other

years in an amount in excess of plaintiff's claim entitled her to an absolute judgment.

3°. That the court erred in its refusal to charge the jury that the remission of the taxes of 1882 or a part thereof, coupled with the fact that the city failed to show that said remission did not injure plaintiff's claim, and that the burden of proof was on her to show the amount or extent thereof.

4°. That the court erred in charging the jury directly that the evidence did not show any injury to the plaintiff, and by directing a verdict of a qualified nature that the question of fact involved was peculiarly within the province of the jury.

5°. That the revenues of 1882, out of which the judgment is made payable, are practically exhausted and plaintiff will and can never be paid out of such a source.

It is therefore ordered that the City of New Orleans do show cause, on April 30th, 1898, at 11 o'clock a. m., why a new trial should not be granted herein.

29 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

*Order Refusing New Trial.*

Extract from the minutes, April term, 1898.

NEW ORLEANS, SATURDAY, *May 28th*, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard at a former day upon the rule for a new trial filed by plaintiff, and was submitted.

On consideration thereof, it is ordered that a new trial herein be refused and the verdict remain undisturbed.

*Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division, November Term, 1897.

NEW ORLEANS, WEDNESDAY, *April 13th*, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

By reason of the verdict of the jury herein and in accordance therewith—

It is ordered, adjudged, and decreed that the plaintiff, Mary Quinlan, do have and recover from the City of New Orleans the
30 sum of twenty-six hundred and thirty-five dollars and seventy-four cents ($2,635.74), payable out of the city's revenues for the year 1882 and out of any surplus of the revenues of any subsequent years which the city council may appropriate to that purpose, together with all the costs of suit.'

Judgment rendered April 13th, 1898; judgment signed June 4th, 1898.

(Signed) CHARLES PARLANGE, *Judge.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Certificate of Judge. Filed June 15th, 1898.*

This is to certify that The City of New Orleans, defendant herein, before answering to the merits of the petition of Mary Quinlan plaintiff herein, filed in this court an exception to the jurisdiction of the court, as follows:

"Now into court comes the City of New Orleans and excepts to the jurisdiction of this court *ratione personæ.*

"That plaintiff's petition contains no averment that this suit could have been maintained by the assignors of the claims or certificates sued upon by Mary Quinlan, and which form the basis of this action.

"Wherefore defendant prays that the petition and supplemental petition filed herein be dismissed at plaintiff's cost."

That said exception was regularly tried and overruled.

That the city thereafter answered; there was a trial on the merits, and judgment was rendered in favor of Mary Quinlan, plaintiff.

The certificates sued on were made by the city of New
31 Orleans and made payable to a designated person or to bearer.

In overruling the exception I said:

In the leading case of Newgass *vs.* N. O., 33 F. R., 196, Judge Billings (the circ. judge concurring) held that the proper construction of 1st sec. of act of Congress of March 9, 1887, relative to suits brought by assignees of promissory notes and choses in action, is:

"That the circ. court shall have no jurisdiction * * * (of such suits), except over:

1°. Suits upon foreign bills of exchange.

2°. Suits that might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made.

3°. Suits upon choses in action payable to bearer and made by a corporation."

So that Judge Billings maintained the jurisdiction as to suits on

choses in action payable to bearer and made by the city of New Orleans, and he denied the jurisdiction as to suits on choses in action made by the city but requiring assignment (*i. e.*, not payable to bearer).

Judge Billings' construction seems to have been followed without dissent:

Rollins *vs.* Chaffe Co., 34 F. R., 91.
Laird *vs.* Indemnity Assur. Co., 44 F. R., 712.
Justice Miller in Wilson *vs.* Knox Co., 43 F. R., 481.
Bank *vs.* Barling, 46 F. R., 357.
Thompson *vs.* Searcy Co. (C. C. A.), 57 F. R., 1036.
Nelson *vs.* Eaton (C. C. A.), 66 F. R., 377.

Benjamin *vs.* N. O., 153 U. S., 411, was a suit upon warrants payable "to the order of A. B.," and upon others simply stating that the Metropolitan police board was "indebted to C. D."

See the warrants on page 419 of vol. 153 U. S.

32 While the warrants in the Benjamin case were choses in action made by a corporation, yet, as they were not payable to bearer, the Supreme Court held, 153 U. S., 433, that to sue upon them the assignee must bring himself within Judge Billings' class 2—*i. e.*, he must allege that his assignor could have sued.

As the board of Metropolitan police was a Louisiana corporation, the Benjamin case also virtually disposes of the contention that sec. 1 of act of M'ch 9, 1887, applies only to non-resident corporations.

Done and signed at New Orleans, La., June 14, 1898.

(Signed) CHARLES PARLANGE,
*U. S. Judge.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501

*Petition of Defendant for Writ of Error. Filed June 15th, 1898.*

To the hon. the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

The petition of The City of New Orleans, defendant in the above-entitled cause, with respect represents:

That on the 13th day of April, 1898, this hon. court rendered a decree and entered judgment herein in favor of Mary Quinlan, plaintiff herein, which said decree and judgment became final on the 4th day of June, 1898.

That in said judgment and decree and in the proceedings prior thereto certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

33 That in this case defendant excepted and pleaded to the jurisdiction of this honorable court in this case, and there was drawn in question the jurisdiction of this honorable court under the statutes of the United States, and the decree and judgment of this honorable court is adverse to said exception and plea to the jurisdiction of this honorable court.

That manifest errors have happened, to the great prejudice and damage of petitioner, in the final decree and judgment herein.

That petitioner desires a writ of error from the said decree and judgment of this honorable court to the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error may be allowed and issue in this behalf to the Supreme Court of the United States for the review and correction of errors in the judgment of this honorable court in this case, and that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States upon petitioner furnishing bond and security in such sum as the court may direct, and that said Mary Quinlan may be duly cited to appear and answer in the premises.

And petitioner prays for such further orders as may be necessary in the premises.

(Signed) W. B. SOMMERVILLE,
*Sol'r for Defendant.*

*Order.*

Let the prayer of the foregoing petition be granted, and let a writ of error be allowed as prayed, upon petitioner furnishing bond, with solvent surety, in the sum of $250, conditioned as the law directs.

(Signed) CHARLES PARLANGE,
*U. S. Judge.*

N. O., June 15th, 1898.

34 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
*vs.*
CITY OF NEW ORLEANS. } No. 12501.

*Assignment of Errors. Filed June 15th,* 1898.

Now comes, by its counsel, The City of New Orleans, the defendant, in the United States circuit court in the above-entitled suit of Mary Quinlan *vs.* The City of New Orleans, and this defendant shows that in the record of proceedings aforesaid there is manifest error in this, that the decree in this suit should have been given for the City of New Orleans against the said Mary Quinlan, and the said plaintiff in error especially assigns the errors in said decree to be relied on in the Supreme Court of the United States for the reversal of said decree *being* as follows, to wit:

That the plaintiff seeks to recover upon certificates issued by the city of New Orleans, of which said plaintiff is assignee of the city employés, to whom said certificates originally issued, or bearer, and that she acquired same from such employés; that said certificates are all payable to the person, the employé of the city to whom they originally issued, or bearer, a copy of one of said instruments being annexed to this assignment; that the plaintiff seeks to recover as assignee of debts on the pay-rolls of the city of New Orleans, due employés of the said city, all citizens of Louisiana, for their services as street-cleaners, etc., and assigned by them; and it thus appearing that the suit is brought substantially and in effect by plaintiff as assignee of written instruments—*i. e.*, time certificates drawn to order—all said certificates and debts being choses in action, under the law there being no jurisdiction in this court of suits by assignees of such choses in action as those sued on by plaintiff without averment and proof that the assignors thereof could have sued if
35 no assignment had been made, and there being no such averment in the petition and supplemental petitions, and the fact being that the assignors could not have sued in this court all citizens of Louisiana, and there being no jurisdiction in this court to decree payment of the amount of $2,635.74 to the parties, all citizens of Louisiana, it results that in all aspects the United States circuit court had no jurisdiction to entertain the suit or render the decree herein appealed from, and the court erred in not sustaining, but, on the contrary, overruling and dismissing, the exception filed by the City of New Orleans to dismiss the suit for want of jurisdiction on the grounds herein assigned and in the exception.

And The City of New Orleans, defendant herein, prays that the decree aforesaid may be reversed and set aside and plaintiff's suit dismissed, and that this defendant may be restored to all things which it has lost by occasion of said decree and judgment.

(Signed) W. B. SOMMERVILLE,
*Solicitor for the City of New Orleans.*

N. O., June 11, '98.

No. 16120. $4.00.

*Certificate of Ownership of Appropriation.*

Approved June 26th, 1883; issued under ordinance No. 347, C. S.

NEW ORLEANS, *Aug.* 22, 1884.

Comptroller's Office, City of New Orleans.

This is to certify that under ordinance 177, adopted March 15, 1883, the sum of four dollars has been appropriated to Mrs. Morissey H. Neugass, transferee, for and on account of street wages, carts, Oct., 1882, and the said named or the bearer hereof shall, upon the surrender of this certificate (and not
36 otherwise), be entitled to receive, in the order of the promulgation of said ordinance, a cash warrant on the treasurer on any funds in the treasury to the credit of the appropriate fund and not otherwise appropriated.

It is herein specially agreed to by the holder of this certificate that it bears no interest and shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or the portion of it to which this certificate applies, is paid or cancelled by being tendered and received in payment of taxes when authorized by law, then this certificate shall be surrendered to the office of the comptroller.

J. N. HARDY, *Comptroller.*

D. M. KILPATRICK,
*Mayor pro Tem.*

Printed on reverse side:

MAYORALTY OF NEW ORLEANS,
CITY HALL, —— 26*th*, 1883.

(*No.* 347, *Council Series.*)

An ordinance to reduce to order and simplify the recording and management of the unpaid accounts against the city for the years 1879, 1880, 1881, and 1882, by issuing for such as are ordinanced certificates of ownership of appropriation on the terms and conditions provided for in this ordinance.

SECTION 1. Be it ordained by the mayor and council of the city of New Orleans, That any creditor of the city to whom an appropriation has been made, but in whose favor the comptroller cannot draw a warrant until there be money in the treasury to the credit of the appropriate account not otherwise appropriated, shall be authorized, upon demand, to receive a transferable certificate of ownership of appropriation, entitling said creditor or bearer to receive a cash warrant for the amount due in the order of the
37 promulgation of the ordinance authorizing the same.

SECTION 2. Be it further ordained, etc., That the said creditor shall sign a receipt therefor, stipulating that the cash warrant shall be claimed only on the surrender of the certificate, and the acceptance of said cash warrant shall be held and considered as an acceptance and consent to the provisions and conditions of this ordinance.

SECTION 3. Be it further ordained, That said cash warrants shall be issued strictly in the order of the promulgation of the ordinance making the appropriation.

SECTION 4. Be it further ordained, That the certificates issued under this ordinance shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which such certificate applies and refers, is paid or cancelled by being tendered or received in payment of taxes, that is the city's portion for the respective years for which said certificate has been issued when authorized by law, then said certificate shall be surrendered to the office of the comptroller.

SECTION 5. Be it further ordained, That the certificate created by this ordinance shall state upon its face the nature and object of its issue, with numbers, dates and names suitable to each, and upon its reverse this ordinance in full shall be printed, the whole in words and figures as follows, with the blanks appropriately filled in when issued from the office of the comptroller.

Adopted by the council of the city of New Orleans, 21st June, 1883.

W. H. MICHEL,
*Ass't Clerk of Council.*

Approved 26th June, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
W. L. WALKER,
*Sec'l'y to the Mayor.*

38 *Bond for Writ of Error.*

Filed June 16th, 1898.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The City of New Orleans and Walter C. Flower, are held and firmly bound, jointly and severally, unto Mary Quinlan in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Mary Quinlan, her heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the sixteenth day of June, in the year of our Lord eighteen hundred and ninety-eight.

Whereas the said City of New Orleans having heretofore, to wit, on the fifteenth day of June, 1898, obtained a writ of error from the Supreme Court of the United States from and to reverse the decree rendered on the fourth day of June, 1898, by the circuit court of the United States for the fifth circuit, holding session in and for the district of Louisiana, in the suit of Mary Quinlan *vs.* The City of New Orleans, No. 12501 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden City of New Orleans shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) CITY OF NEW ORLEANS. [L. S.]
(Signed) W. C. FLOWER, *Mayor.* [L. S.]
(Signed) W. C. FLOWER, *Surety.*

Signed, sealed, and delivered in the presence of—

—— ——.

Approved:
(Signed) CHARLES PARLANGE,
*U. S. Judge.*

39 (Printed on reverse side:)

UNITED STATES OF AMERICA, } ss:
*District of Louisiana,* }

Personally appeared Walter C. Flower, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, Louisiana, and is worth the full sum of two hundred and fifty dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) W. C. FLOWER.

Subscribed and sworn before me this 16th day of June, 1898.

H. J. CARTER,
*Commissioner U. S., Eastern District of Louisiana.*

40 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, New Orleans division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Mary Quinlan and The City of New Orleans, a manifest error hath happened, to the great damage of the said City of New Orleans, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 24 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

E. R. HUNT,
*Clerk of the United States Circuit Court for the Eastern District of Louisiana.*

Allowed by—
CHARLES PARLANGE,
*U. S. Judge.*

41 [Endorsed:] United States circuit court. No. 12501. Mary Quinlan *versus* City of New Orleans. Writ of error. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Jun- 24, 1898. E. R. Hunt, clerk.

42 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mary Quinlan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the cause wherein Mary Quinlan is plaintiff and The City of New Orleans is defendant, No. 12501 of the docket, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

(Signed) CHARLES PARLANGE, *Judge.*

CLERK'S OFFICE.

A true copy.

E. R. HUNT, *Clerk,*
By H. J. CARTER, *D'y Clerk.*

June 25, 1898.

43 [Endorsed:] Return. United States circuit court, eastern district of Louisiana. No. 12501. Mary Quinlan *vs.* City of New Orleans. Citation. Marshal's return. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Jul- 5, 1898. E. R. Hunt, clerk.

Received by U. S. marshal, New Orleans, La.

June 27, '98, personally appeared before the undersigned, clerk of the U. S. circuit court, John Early, who upon oath says that he served the within citation on Mary Quinlan by delivering a true copy thereof to Chas. Louque, attorney — record and agent for Mary Quinlan, in person, in the city of New Orleans, La.

JOHN EARLY,
*Dep'ty U. S. Marshal.*

Sworn to and subscribed before me this 5th day of July, 1898.

{ Seal of Henry J. Carter, U. S. Commissioner, New Orleans, La., E. Dist. of La. }

H. J. CARTER,
*U. S. Commissioner.*

44 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 42 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Mary Quinlan *versus* The City of New Orleans, No. 12501 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5 day of July, A. D. 1898.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5 day of July, A. D. 1898.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: Case No. 16,928. E. Louisiana C. C. U. S. Term No., 343. The City of New Orleans, plaintiff in error, *vs.* Mary Quinlan. Filed July 8th, 1898.

# IN THE SUPREME COURT OF THE UNITED STATES.

No. 343.

OCTOBER TERM, 1898.

CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

MARY QUINLAN, DEFENDANT IN ERROR.

*On Writ of Error to the United States Circuit Court for the Eastern District of Louisiana. Case No. 12,501.*

SAMUEL L. GILMORE,
*City Attorney.*

W. B. SOMMERVILLE,
*Assistant City Attorney; Solicitors and Counsel for Plaintiff in Error.*

NEW ORLEANS, NOV. 12, 1898.

# IN THE SUPREME COURT OF THE UNITED STATES.

No. 343,

October Term, 1898.

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CITY OF NEW ORLEANS, Plaintiff in Error,

*versus*

MARY QUINLAN, Defendant in Error.

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*On Writ of Error to the United States Circuit Court for the Eastern District of Louisiana. Case No.* 12,501.

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Statement of Case.

Mary Quinlan, a citizen of New York, sues the City of New Orleans for $3135.74, as a non-resident tranferee and owner of various certificates of indebtedness issued by the City to its employes; the following being a copy of one of said certificates:

No. 12,430. $15.08.

Certificate of Ownership of Appropriation.

Approved June 26th, 1883.

Issued under Ordinance No. 347, C. S.

Comptroller's Office, City of New Orleans,
New Orleans, Oct. 14, 1885.

This is to certify, that under Ordinance 8099, adopted October 24, 1882, the sum of Fifteen $\frac{8}{100}$ dollars has been appropriated to Jno. Killilea, A. Jardet, transferee, for and on account of street wages, Aug., 1882, and the said named or the bearer hereof shall, upon the surrender of this certificate (and not otherwise) be entitled to receive in the order of the promulgation of said Ordinance, a cash warrant on the treasurer, on any funds in the treasury to the credit of the appropriate fund and not otherwise appropriated.

It is herein specially agreed to by the holder of this certificate that it bears no interest and shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which this certificate applies, is paid or cancelled by being tendered and received in payment of taxes when authorized by law, then this certificate shall be surrendered to the office of the Comptroller.

J. V. GUILLOTTE, Mayor. BENJ. H. WATKINS, Comptroller.

The other certificates sued upon are like the foregoing, only changing the names of payees, the amounts to be paid, and the dates of issuance.

The City filed an exception to the jurisdiction of the court, *ratione personæ*, and asked for the dismissal of the case. The exception was overruled, by the following judgment:

Judge Parlange gave the following as his reason for overruling the exception:

In the leading case of Neugass vs. New Orleans, 33 F. R. 196, Judge Billings (the circuit judge concurring) held that the proper construction of the first section of act of Congress of March 9, 1887, relative to suits brought by assignees of promissory notes and choses in action, is 'That the Circuit Court shall have no jurisdiction' (of such suits) except over—

1. Suits upon foreign bills of exchange.
2. Suits that might have been prosecuted in such court to recover the said contents, if no assignment or transfer had been made.
3. Suits upon choses in action payable by a corporation.

So that Judge Billings maintained the jurisdiction as to suits on choses in action payable to bearer and made by the City of New Orleans; and he denied the jurisdiction as to suits on choses in action made by the city but requiring assignment (i. e., not payable to bearer).

Judge Billings' construction seems to have been followed without dissent. Rollins vs. Chaffe, 34 F. R. 91; Laird vs. Indemnity Assurance Company, 44 F. R. 712; Justice Miller in Wilson vs. Knox Company, 43 F. R. 481; Bank vs. Barling, 46 F. R. 357; Thompson vs. Searcy Company (C. C. A.), 57 F. R. 1030; Nelson vs. Eaton (C. C. A.), 66 F. R. 377.

Benjamin vs. New Orleans, 153 U. S. 411, was a suit upon warrants payable 'to the order of A. B.' and others simply stating that the Metropolitan Police Board was 'indebted to C. D.' See warrants, page 419, 153 U. S.

While the warrants in the Benjamin case were choses in action made by a corporation, as they were not payable to bearer, the Supreme Court properly held (153 U. S. 433) that to sue upon them the assignor must bring himself within Judge Billings' class 2, i. e., he must allege that the assignees could have sued.

The case proceeded regularly to trial, and final judgment was rendered in favor of Miss Mary Quinlan, and against the City of New Orleans, for $2635.74, payable out of the revenues of the year 1882.

The City excepted that Miss Mary Quinlan's petition contained no averment that this suit could have been maintained by the assignors of the claims or certificates sued upon by her, and which form the basis of this action. The errors assigned being :

That the plaintiff seeks to recover upon certificates issued by the City of New Orleans, of which said plaintiff is assignee of the city employes to whom said certificates originally issued, and that she acquired same from such employes; that said certificates are all payable to the person, the employe of the City, to whom they originally issued, a copy of one of said instruments being annexed to this assignment; that the plaintiff seeks to recover as assignee of debts on the pay rolls of the City of New Orleans, due employes of the said City, all citizens of Louisiana, for their services as street cleaners, etc., and assigned by them ; and it thus appearing that the suit is brought substantially and in effect by plaintiff as assignee of written instruments, *i. e.*, time certificates drawn to order, all said certificates and debts being choses in action ; under the law there being no jurisdiction in this Court of suits by assignees of such choses in action, as those sued on by plaintiff, without averment and proof that the assignors thereof could have sued if no assignment had been made, and there being no such averment in the petition and supplemental petitions, and the fact being that the assignors could not have sued in this

> Court, all citizens of Louisiana, and there being no jurisdiction in this Court, to decree payment of the amount of $2635.74 to the parties, all citizens of Louisiana, it results that in all aspects the United States Circuit Court had no jurisdiction to entertain the suit or render the decree herein sought to be reversed, and the Court erred in not sustaining, but on the contrary overruling and dismissing the exception filed by the City of New Orleans, on the grounds herein assigned and in the exception.

The City, in its answer, put clearly at issue its liability to the original payees of the certificates sued upon; these certificates, being non-negotiable choses in action, the contest over them was between the City of New Orleans and the original payees of said certificates, residents of Louisiana, and the contest is therefore between citizens of the same State, and not of different States. The certificates, on their face, declare that they "shall not novate or in any manner affect the value of the claim against the city under the ordinance referred to, but shall be simply an evidence of *transferable ownership thereof*."

The City, plaintiff in error, stands on its plea to the jurisdiction of the Circuit Court, and asks for a reversal of the judgment of that Court, and that the dismissal of the case be ordered for want of jurisdiction in the court *a qua*. *United States vs. Jahn*, 155 U. S. 109.

## ARGUMENT.

The certificates sued upon are non-negotiable instruments. *City vs. Strauss*, 25 (La.) Ann. 50; *Wall vs. County of Monroe*, 103 U: S. 75; *District of Columbia vs. Cornell*, 103 U. S. 661; *Mayor vs. Ray*, 19 Wall. 468; *Claiborne Co. vs. Brooks*, 111 U. S. 409.

In *Wall vs. County of Monroe*, 103 U. S. 75, the Court held that city scrip issued to bearer, like that involved in this case, could not be sued upon in the Federal Courts by a non-resident transferee. The Court say:

> The following is a copy of one of them (warrants). The others are of like tenor and effect, though some of them are for only $20:
>
> $50) (No. 804.

The treasurer of the county of Monroe will pay to Frank Gallagher or *bearer* the sum of $50, out of any money in the treasury for general county purposes, and not otherwise appropriated.

Given under my hand, at office, in Clarendon, Ark., this 15th day of September, 1875.

W. S. DUNLAP, *Clerk.*

* * * The new warrants were purchased in good faith for a valuable consideration by the plaintiff, who, on the refusal of the treasurer to pay them on demand, instituted this action. * * *

*Mr. Justice Field* delivered the opinion of the Court. The warrants in suit are evidences of indebtedness by the county of Monroe, issued by that branch of its government to which is intrusted, by the laws of the State, the examination and approval of claims against the county. They are orders upon the treasurer of the county to pay out of its funds for county purposes, not otherwise appropriated, the amounts specified. * * *

The Court, speaking through Mr. Justice Bradley, said: Vouchers for money due certificates of indebtedness for services rendered, or for property furnished for the uses of the city, orders or drafts drawn by one city officer upon another, or any other device of the kind, used for liquidating the amounts legitimately due to public creditors, are, of course, necessary instruments for carrying on the machinery of municipal administration, and for anticipating the collection of taxes. But to invest such documents with the character and incidents of commercial paper, so as to render them in the hands of *bona fide* holders absolute obligations to pay, however irregularly or fraudulently issued, is an abuse of their true character and purpose. And again: Every holder of a city order or certificate knows that, to be valid and genuine at all, it must have been issued as a voucher for city indebtedness. It could not be lawfully issued for any other purpose. He must take it therefore, subject to the risk that it has been lawfully and properly issued. His claim to be a *bona fide* holder will always be subject to this qualification. The face of the paper itself is notice to him that its validity depends upon the regularity of its issue. The officers of the city have no authority to issue it for any illegal or improper purpose, and their acts can not create an estoppel against the city itself, its taxpayers or people. Persons receiving it from them know whether it is issued, and whether they receive it for a proper purpose and a proper consideration. Of course they are affected by the absence

> of these essential ingredients; and all subsequent holders take *cum onere*, and are affected by the same defect. These observations apply equally to the county warrants in suit, as to the city warrants there considered. And the same reasons which deny to them negotiability in the sense of the law merchant, allow any matter of set-off to them which the county held against the original parties.
>
> * * * No Court of Arkansas has held that they were *negotiable* in the sense of the law merchant, so as to shut out, in the hands of a *bona fide* purchaser, inquiries as to their validity, or *preclude defences which could be made to them in the hands of the original parties.* The law is not different there from that which obtains in other States.

But, the Judge *a quo* holds to the contrary; and follows the decision of Judge Billings in *Neugass vs. New Orleans*, 33 F. R. 196. Judge Billings also maintained the jurisdiction of his court in *New Orleans vs. Benjamin*, which was also a suit on choses in action issued by a municipal corporation, and the Court reversed the judgment of Judge Billings, and ordered the dismissal of the suit for want of jurisdiction in the Federal Courts. 153 U. S. 432.

The decision in *Wall vs. County of Monroe*, 103 U. S. 75, was rendered under the judiciary act of March 3, 1875.

Has the jurisdiction of the Circuit Courts been since enlarged, and *has the Circuit Court jurisdiction in this case?* As it is a court of limited jurisdiction, it has not, unless such enlarged jurisdiction is conferred by Act of March 3, 1887, as amended by Act of August 13, 1888, which, in part, is as follows:

> * * Nor shall any Circuit or District Court have cognizance of any suit, except on foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made. * * * 25 St. 434.

It is contended that the foregoing act confers jurisdiction upon the Circuit Courts, in suits upon city time certificates made payable to bearer, because they appear to be issued by a

corporation, a municipal corporation. The city, the plaintiff in error, holds to the contrary. The object of the Act of 1887 was to amend certain sections of the Act of March 3, 1875. It was not only to amend, but it was to restrict the jurisdiction of the Circuit Courts, as defined in the Act of 1875. The jurisdiction was being stolen by A B transferring to C D negotiable paper for the purposes of suit only, and the Circuit Courts were being overcrowded with work which they were never designed to do. Mr. Culbertson, Chairman of the Judiciary Committee, in introducing the bill of 1887 and 1888, said, in part, by way of explanation.

> * * * * * The object of the bill is to *diminish the jurisdiction of the Circuit Courts* and the Supreme Court of the United States, to promote the convenience of the people, and to lessen the burden and expense of litigation. The methods employed by the bill are, first, to raise the minimum amount, giving the Circuit Courts jurisdiction from $500 to $2000. In the second place we propose to take away from the Circuit Courts of the United States all jurisdiction of controversies between the assignees of promissory notes and the makers thereof, unless suit could have been maintained in such courts had no assignment been made. In the next place, the bill proposes to take away wholly from the Circuit Courts the jurisdiction now exercised by them over controversies in which one of the parties is a corporation organized under the laws of one State and doing business in another State. We propose to provide that the Circuit Courts shall have no jurisdiction over controversies of that sort; that whenever a corporation organized under the laws of one State shall carry on its business in another State, the corporation shall, for judicial purposes, be considered as a citizen of the State in which it is carrying on business.
>
> * * * * * *This embodies, substantially, all the changes in the act.* The effect of these changes I beg to refer to for a moment. The minimum jurisdiction of $500 was placed in the original judiciary act in 1789, and it has been the law ever since. The population of the country then was 4,000,000, and now is over 54,000,000. The amount of business of the country in the courts then and now sustain no comparison whatever.

The next proposition is to deny the right of an assignee of a promissory note to bring suit in a Federal Court. That was the law from 1789 until 1875. For ninety years

the assignee of a promissory note, or any other chose in action, could not bring suit in a Federal Court, unless a suit could have been maintained had no assignment been made.

The increase of jurisdiction of the Circuit Courts of the United States, from that change of law in 1875, has multiplied the business in that court enormously, while it diminishes the business in the Circuit Courts, which are overloaded everywhere now. It also diminishes the business in the Supreme Court of the United States, which is three years behind upon its docket.

* * * The other proposition is to take away from the Circuit Courts of the United States jurisdiction over controversies between corporations created by the laws of a State, and which go into other States and open offices and carry on business. For judicial purposes we make such corporations citizens of that State, and compel them to sue in the forum, or in the courts of the State in which they carry on their business. Over one-third of the business now in the Circuit Courts of the United States and in the Supreme Court of the United States spring from this very jurisdiction to which I call your attention (*Cong. Record*, Vol. 18, Part 1, p. 613; 49th Cong., 2d Sess.)

*Mr. Edmunds* said, in discussing the bill in the Senate: In this state of things, and wishing myself to diminish the wrong and inconvenience that exist in regard to what is now a national jurisdiction, I was willing to agree to this report. It contains one or two things of small importance and of temporary operation that I should entirely disagree to if they were separate propositions, but the general benefit of the bill, if we correctly understand it, will be greatly to the interest of the people who have merely local controversies with corporations, and so on, that ought fairly to be tried in the local tribunals just as if they were the citizens of the same State (*Cong. Record*, Vol. 18, Part 3, p. 2544; 49th Cong., 2d Sess.).

The object of the Act of 1888 is thus made plain. It is to diminish the jurisdiction of the Circuit Courts. "*For ninety years the assignee of a* promissory note, or any other *chose in action, could not bring suit in a Federal Court*, unless a suit could have been maintained had no assignment been made." Miss Quinlan would not have attempted, under the judiciary acts of 1789 and 1875, to bring this suit in the Federal Courts, upon a chose in action, transferred to her by a citizen of the State of

Louisiana; yet, under the Act of 1887, which act is designed to limit the jurisdiction, she filed this suit in the Federal Court of said State.

The views of Mr. Culbertson and of Mr. Edmunds, as to the extent and intent of the Act of 1887 and 1888, are also the views of Mr. Justice Miller of the Court, as set forth in *Wilson vs. Knox Co.*, 43 Fed. Rep. 482; he says:

> * * * The construction would *extend* the jurisdiction of the Federal Courts, without any apparent reason, over a class of suits by assignees of choses in action, *never before within their jurisdiction, whereas the main purpose of the Act of* 1887 *seems to have been to curtail their jurisdiction.* The general rule enunciated by the statute is that the Federal Courts shall not have jurisdiction of a suit by an assignee "of a promissory note or other chose in action," when the assignor could not maintain such a suit. The clause, "if such instrument be payable to bearer and be not made by any corporation," operates as an exception to the general rule, and gives the Federal Courts jurisdiction of those suits by assignees where the action is founded on an obligation, made by a corporation, that is payable to bearer, *and is negotiable by mere delivery.* In the light of previous legislation on the subject *our view is that Congress intended* by Act of March 3d, 1887, *to prohibit suits in the Federal Court by assignees of choses in action*, unless the original assignor was entitled to maintain the suit, in all cases except suits on foreign bills of exchange, and *except suits on promissory notes made payable to bearer and executed by a corporation.* Construed in this way, the Act of 1887 operates to restrict to some extent the jurisdiction exercised under the Act of March 3, 1875, which was probably the intention of the law-maker.

The certificates sued upon by Miss Quinlan are not "promissory notes made payable to bearer and executed by a corporation." They are not even negotiable instruments under the law merchant and the law of Louisiana. *City vs. Strauss*, 25 (La.) Ann., 50. They certify on their face that they are mere "certificates of ownership," and that said certificate "shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof." Although the certificates

were made payable to A, B or bearer, they are non-negotiable instruments, and all the equities between the city, a department of the State, and its employes are preserved. A suit upon these certificates means a trial upon any issue which might be presented by the city against its employe or the original payee. *City vs. Strauss*, 25 (La.) Ann. 50.

The judiciary Act of 1875 is entitled an act "to determine the jurisdiction of circuit courts," etc. *To determine* is "to limit," "to ascertain definitely," (Webster's Dictionary) the jurisdiction of circuit courts; and the title of the Act of 1887-1888 is:

> "To amend sections one, two, three and ten of an act to determine the jurisdiction of the Circuit Courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes, approved March third, eighteen hundred and seventy-five." *United States Statutes At Large*, 50th Congress, 1887-1889, Vol, 25, p. 434.

And, it has been seen, in the remarks of Mr. Culbertson in the House and of Mr. Edmunds in the Senate, that the object of the Act of 1887 was to *diminish* the jurisdiction of the Circuit Courts. And Mr. Justice Miller also found that the object of the act was to diminish that jurisdiction. Had the Congress in 1887-88 intended to *increase* that jurisdiction, as found by the judge *a quo*, and confer jurisdiction upon the Federal Courts in suits on non-negotiable instruments issued to bearer by a corporation, it is submitted, it would have said so affirmatively. It would never have attempted to confer jurisdiction in such negative language as:

> Nor shall any Circuit or District Court have cognizance of any suit * * * to recover the contents of any promissory note or other chose in action in favor of any assignee, * * * if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made.

The reasons for giving the Federal Courts jurisdiction of suits by assignees, where actions sound in the obligations of corporations payable to bearer, and which are *negotiable by delivery*, and for denying the jurisdiction, where the chose in ac-

tion is like the certificate herein involved, *not a negotiable instrument*, lie upon the surface. The reasons in question are to be met with everywhere in *Ray vs. Mayor*. They involve considerations of general good and of public policy. Municipal corporations are local governments, in the interest of peace, good order, and the general well being of political society. To invest municipal scrip with the character of negotiable commercial paper would be an abuse of its true character, and expose political communities to the dangers of bankruptcy by putting them in the power of corrupt officials.

There are cases, however, where the general interest, and especially the public faith, demand that municipal securities be allowed the same privileges with negotiable instruments. As, however, the cases referred to constitute an exception to the general rule of law, it must appear that they have been clearly provided for. In the absence of clear provision in that behalf they are not to be considered in the light of negotiable instruments. The judiciary Act of 1887, as amended in 1888, showed the unwillingness of the Congress to allow the same access to the Federal Courts for suits against corporations where the instrument proceeded on is negotiable, and where it is not, and Congress realized the necessity of relieving the overburdened dockets of the Courts; but declined, at the same time, whatever the presure of business might be, to interfere at all with proceedings upon negotiable instruments made payable to bearer and issued by a corporation. When the Act of 1887 prohibited these Courts from exercising jurisdiction in controversies upon obligations not made by any corporation, it evidently did not, either expressly, or by clear implication, thereby grant the power to enforce payment against municipal governments of their non-negotiable scrip where recovery could not have been had by the original holder.

In "determining," or "defining," or "limiting" the jurisdiction of the Federal courts the Congress, it is submitted, did not confer jurisdiction by implication. To say that the Federal courts shall not have jurisdiction, except the indebtedness sued upon

be issued by a corporation, is not equivalent to saying that the Federal courts shall have jurisdiction in any case. Federal courts are statutory courts, of limited jurisdiction, and that jurisdiction must be specifically conferred.

The judge *a quo* says that the judgment of Judge Billings in the *Neugass* case, 33 F. R. 196, maintaining the jurisdiction of the Circuit Court of the United States in a similar case to this, has been followed in a list of cases mentioned by him. The *Neugass* case embraced two kinds of warrants issued by the City of New Orleans. Those warrants held by Mr. Neugass were made payable to A, B *or order*, and Mr. Neugass' suit was dismissed for want of jurisdiction. Mr. Stewart, a co-plaintiff in that suit, held warrants issued to A, B *or bearer*, and jurisdiction over Mr. Stewart's suit was maintained. It was the ruling of Judge Billings—dismissing the Neugass suit for want of jurisdiction—which was approved in two of the cases mentioned by the judge *a quo: Wilson vs. Knox Co.*, 43 F. R. 481, and *Laird vs. Indemnity Mutual Marine Assurance Co.*, 44 F. R. 712. In *Bank of British North America vs. Barling*, 46 F. R. 357, the suit was on negotiable instruments, and not on non-negotiable instruments. In *Nelson vs. Eaton*, 66 F. R. 376, the mortgage note sued upon was made payable to a non-resident. The *Neugass* case appears to have been twice followed: in *Rollins vs. Chaffee Co*, a Colorado case, 34 F. R. 91, and in *Thompson vs. Searcy Co.*, an Arkansas case, 57 F. R. 1030; but, it is submitted, had the *Neugass* case been appealed the decision therein would have been reversed for the same reason that Judge Billings was reversed in the *Benjamin* case. 153 U. S. 432. In that case the Court say:

> In our judgment the pleadings show a suit to recover the contents of choses in action, and, as the bill contained no averment that it could have been maintained by the assignors if no assignments had been made (from the statement accompanying the certificate it appears affirmatively that it could not), the jurisdiction of the Circuit Court cannot be sustained on the ground of diverse citizenship.

Not only is there nothing in the Act of 1887, as amended in 1888, which confers jurisdiction on the Circuit Court in this case, but the Constitution, Art. III, sec. 2, confines the jurisdiction to "controversies between citizens of different States," *etc.* Now, the controversy here is not between Miss Quinlan and the City of New Orleans; it is between the City and its employes. The City has the right, on being sued upon these non-negotiable certificates, to controvert, not only the liability of the City, as stated in the certificates, but to plead compensation, or forfeiture, or any defense whatsoever against its employes, and original payees. The controversy is essentially and exclusively between the City and its employes, no matter who the holder of the certificates or nominal plaintiff in the case may be, and therefore not between citizens of different States.

The judgment of the lower court should be reversed, and the suit be dismissed.

Respectfully submitted,

SAM'L L. GILMORE,

*City Attorney,*

W. B. SOMMERVILLE,

*Assistant City Attorney; Solicitors and Counsel for Plaintiff in Error.*

NEW ORLEANS, NOV. 12, 1898.

W. B. Sommerville
of counsel

SUPREME COURT OF THE UNITED STATES.



CITY OF NEW ORLEANS,
Plaintiff in Error, Defendant.

versus

MARY QUINLAN,
Defendant in Error, Plaintiff.

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# BRIEF ON BEHALF OF PLAINTIFF, DEFENDANT IN ERROR.

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Sec. 563. "Nor shall any Circuit Court or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such Court to recover thereon, if no assignment has been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange."

1 Sup. Rev. Stats. 176. Acts of 1875.

The statute of 1888, under which this suit was brought, is as follows:

"Nor shall any Circuit or District Court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose

in action, in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by a corporation, unless such suit might have been prosecuted in such Court to recover the said contents, if no assignment or transfer had been made."

25 Statutes at large, p. 434.

This suit is brought on an instrument payable to bearer and made by a corporation. The instrument sued upon is transferable by delivery. The holder thereof is the owner to all intents and purposes. The instrument is not a negotiable one under the law of merchants and need not be.

The law of 1888, which amends the act of 1875, is very different from the former.

The statute contains an exception to the general rule in favor of instruments made by a corporation and payable to bearer.

In Jerome vs. Rio Grande Co., 18 Fed. Rep., p. 873, Hallett J. decided, "a question has arisen whether upon such warrants, payable to a person named or to bearer, which circulate from hand to hand without indorsement, an action can be maintained by a holder, a citigen of another States, against a County in this State, without showing that the persons to whom they were issued are qualified to sue in this Court.

It cannot be contended that such warrants are negotiable as bills of exchange or promissory notes and free from all equities in the hands of an innocent holder. All holders take them subject to any defense that may be made against the payee, even when they are payable to bearer.

Dill. Mun. Cor., 3d Ed., Secs. 487-503.

Nevertheless, as they are payable to bearer, the property therein passes by delivery, and a note payable to bearer is payable to anybody and not effected by the disabilities of the nominal payee.

Bank of Ky. vs. Wister, 2 Pet. 318.

Such instruments are not assignable within the meaning of the Act of Congress of 1875, regulating the jurisdiction of this Court. (18 Sta. 470.) They are taken to be due on an original and direct promise to the bearer and not by assignment from the payee and past holder. Thompson vs. Perrine, 106 U. S. 589."

Judge Billings decided with the concurrence of Judge Pardee, C. J., "That under the Act of 1887, those rights of action, which required an assignment, were excluded from the jurisdiction, unless the assignor could have prosecuted the action to recover thereon before the assignment. Those choses in action which did not require any express assignment, because they were payable to bearer, and thus passed by delivery, were also excluded, from the jurisdiction, unless made by some corporation, if the transferee could not have maintained suit thereon before transfer. The construction of the restriction may also be stated thus: The Circuit Court shall have no jurisdiction over suits for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees, except over: First, suits upon foreign bills of exchange; second, suits that might have been proescuted in such Courts to recover the said contents, if no assignment or transfer had been made; third, suits upon choses in action, payable to bearer, and made by a corporation."

This decision has been followed without dissent and reflects the true construction of the statute of 1888.

Movable property is not considered negotiable and yet if the owner of that specie of property should sue in the Courts of the United States for the recovery of such property no one would contend that an averment would have to be made, that the transferer or vendor had the right to sue for same.

The contention in the brief of plaintiff in error, that because the instrument sued upon is not negotiable, therefore the Court is without jurisdiction, has no foundation in the words of the Statute and does not exist.

The decision of Judge Billings has been followed in:

Rollins vs. Chaffe, 34 Fed. Rep. 91.

Laird vs. Indemnity Assurance Co., 44 F. R. 712; 43 F. R. 481; 46 F. R. 357; 57 F. R. 1036; 66 F. R. 377.

The lower Court properly maintained its jurisdiction and the judgment should be affirmed with costs.

Respectfully submitted,

CHAS. LOUQUE,

Of Counsel.

N. O., Dec. 13th, 1897.

# NEW ORLEANS v. QUINLAN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 343. Submitted December 19, 1898. — Decided February 27, 1899.

The Circuit Court of the United States for the Eastern District of Louisiana has jurisdiction of a suit brought in it by a citizen of New York to recover from the city of New Orleans on a number of certificates, payable to bearer, made by the city, although the petition contains no averment that the suit could have been maintained by the assignors of the claims or certificates sued upon.

*Newgass* v. *New Orleans*, 33 Fed. Rep. 196, approved in holding that "A Circuit Court shall have no jurisdiction for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees except over, (1) suits upon foreign bills of exchange; (2) suits that might have been prosecuted in such court to recover the said contents, if no assignment or transfer had been made; (3) suits upon choses in action payable to bearer, and made by a corporation."

THE case is stated in the opinion.

*Mr. Samuel L. Gilmore*, *Mr. W. B. Sommerville* and *Mr. Branch K. Miller* for plaintiff in error.

*Mr. Charles Louque* for defendant in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was an action brought in the Circuit Court of the United States for the Eastern District of Louisiana by Mary Quinlan, a citizen of the State of New York, against the city of New Orleans, to recover on a number of certificates owned by her, made by the city, and payable to bearer. Defendant excepted to the jurisdiction because the petition contained no averment that the suit could have been maintained "by the assignors of the claims or certificates sued upon." The

Circuit Court overruled the exception, and the cause subsequently went to judgment.

By the eleventh section of the Judiciary Act of 1789, it was expressly provided that the Circuit Courts could not take cognizance of a suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange. The act of March 3, 1875, 18 Stat. 470, c. 137, provided: "Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange." The restriction was thus removed as to "promissory notes negotiable by the law merchant," and jurisdiction in such suits made to depend on the citizenship of the parties as in other cases. *Tredway* v. *Sanger*, 107 U. S. 323.

By the first section of the act of March 3, 1887, c. 373, 24 Stat. 552, as corrected by the act of August 13, 1888, c. 866, 25 Stat. 433, the provision was made to read as follows: "Nor shall any Circuit or District Court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made."

These certificates were payable to bearer and made by a corporation; they were transferable by delivery; they were not negotiable under the law merchant, but that was immaterial; they were payable to any person holding them in good faith, not by virtue of any assignment of the promisee, but by an original and direct promise, moving from the maker to the bearer. *Thompson* v. *Perrine*, 106 U. S. 589. They were, therefore, not subject to the restriction, and the Circuit Court

had jurisdiction. In *New Orleans* v. *Benjamin*, 153 U. S. 411, where the question was somewhat considered, the instruments sued on were not payable to bearer.

In *Newgass* v. *New Orleans*, 33 Fed. Rep. 196, District Judge Billings construed the provision thus: "The Circuit Court shall have no jurisdiction over suits for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees except over — *First*, suits upon foreign bills of exchange; *Second*, suits that might have been prosecuted in such court to recover the said contents, if no assignment or transfer had been made; *Third*, suits upon choses in action payable to bearer, and made by a corporation." This decision was rendered several months prior to the passage of the act of August 13, 1888, and has been followed by the Circuit Courts in many subsequent cases. The same conclusion was reached by Mr. Justice Miller in *Wilson* v. *Knox County*, 43 Fed. Rep. 481, and *Newgass* v. *New Orleans* was cited with approval. We think the construction obviously correct, and that the case before us was properly disposed of.

It is true that the act of March 3, 1887, was evidently intended to restrict the jurisdiction of the Circuit Courts, but the plain meaning of the provision cannot be disregarded because in this instance that intention may not have been carried out.

*Judgment affirmed.*